

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:10-CR-55-D-1

UNITED STATES OF AMERICA

v. JAMES JOSEPH MCMILLAN,

Defendant.

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ORDER

On April 6, 2010, pursuant to a written plea agreement, James Joseph McMillan (“McMillan”) pleaded guilty to conspiracy to distribute and possess with intent to distribute 5 kilograms or more of cocaine and 50 grams or more of cocaine base (crack) (count one), and money laundering (count four). See [D.E. 33, 34]. On July 20, 2012, the court held McMillan’s sentencing hearing. See [D.E. 81, 82]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report (“PSR”) [D.E. 26] and ruled on McMillan’s objections. See Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated McMillan’s total offense level to be 40, his criminal history category to be III, and his advisory guideline range on count one to be 360 months’ to life imprisonment and on count four to be 240 months’ imprisonment. After granting the government’s motion under U.S.S.G. § 5K1.1 and thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced McMillan to 216 months’ imprisonment on each count to run concurrently. See [D.E. 81, 82]. McMillan did not appeal.

On February 2, 2016, McMillan moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782. See [D.E. 92]. McMillan’s new advisory guideline range on count one is 292 to 365 months’ imprisonment, based on a total offense level of

38 and a criminal history category of III. See Resentencing Report. McMillan requests a 175-month sentence. See id.; [D.E. 92].

The court has discretion under Amendment 782 to reduce McMillan's sentence. See, e.g., Chavez-Meza v. United States, 139 S. Ct. 1959, 1963–68 (2018); Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce McMillan's sentence, the court finds that McMillan engaged in serious criminal behavior involving a large quantity of illegal narcotics and a firearm. See PSR ¶¶ 10–12. Moreover, McMillan is a violent recidivist and has convictions for possession of crack cocaine, injury to personal property, assault on a female (three counts), assault inflicting serious injury, attempted larceny from a person, and possession of stolen good/property. See id. ¶¶ 15–24. Moreover, McMillan has performed poorly on supervision and has as spotty work history. See id. ¶¶ 15–16, 20, 26, 39–43. Nonetheless, McMillan has taken some positive steps while incarcerated on his federal sentence. See Resentencing Report; *cf. Pepper v. United States*, 562 U.S. 476, 491 (2011).

Having reviewed the entire record and all relevant policy statements, the court finds that McMillan received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a). Further reducing McMillan's sentence would threaten public safety in light of his serious criminal conduct and serious criminal history. *Cf.* U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the

court denies McMillan's motion for reduction of sentence under Amendment 782. See, e.g., Chavez-Meza, 139 S. Ct. at 1963–68; Patterson, 671 F. App'x at 105–06; Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, the court DENIES McMillan's motion for reduction of sentence [D.E. 92].

SO ORDERED. This 30 day of July 2018.

J. Dever
JAMES C. DEVER III
Chief United States District Judge